IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
The Hon'ble Mr. Justice Ravi Krishan Kapur

WPO NO. 406 of 2015

Bimala Agarwal & Ors.

-vs-

Kolkata Municipal Corporation & Ors.

For the petitioners	:	Mr. Saptangshu Basu Mr. Sagar Bandyopadhyay, Mr. Soma Kar Ghosh,
For the KMC	:	Mr. Biswajit Mukherjee Mr. Arijit Dey
Heard on	:	28.01.2021, 11.02.2021
Judgment on	:	24.02.2021

Ravi Krishan Kapur, J.:

1. This is the second round of litigation between the parties. In an earlier writ petition [being WP 319 of 2004 (Bimala Agarwal & Ors. vs. Kolkata Municipal Corporation & Ors.)], a Learned Single Judge of this Hon'ble Court had directed the respondent authorities to consider and dispose of a representation of the petitioner. By an order dated 24 February, 2015 ("the impugned order") the Assessor-Collector (South), (the respondent no.3) pursuant to that direction had passed an order disposing of the

representation. The challenge in this petition is directed against the impugned order.

2. The facts of this case in brief are as follows:

   (a) The petitioner nos.1 and 2 and one late Urmila Agarwal had jointly purchased a flat being flat no.G/6 situated at premises no.8/1A Sir William Jones Sarani, Kolkata-700017 ("the flat"). It is said that after the death of the said Urmila Agarwal her undivided interest devolved upon her legal heirs i.e. her husband and her two daughters.

   (b) The flat had at some point of time, been given on tenancy to one IFB Industries who had been paying rent to the petitioners for use and occupation of the flat. It is alleged on behalf of the petitioners that by an assessment order dated 5 August, 1996 the annual valuation of the flat was determined at Rs.49,860/- and the gross amount of tax payable was assessed at Rs.4,986/- per quarter. It is also alleged that the petitioners had been paying the entire taxes on the basis of the said assessment.

   (c) The further case of the petitioners is that, IFB Industries surrendered the tenancy in April 2002 and thereafter the flat had been kept under lock and key by the petitioners and no tenant had thereafter been inducted. Subsequently, the petitioners had made payment under a Tax Waiver Scheme promulgated by the respondent authorities for a sum of Rs.1,57,426/-. In this connection, the respondent authorities had also issued a "No Outstanding Certificate" to the petitioners. The petitioners further alleged that thereafter, no revaluation has been made of the said flat. Suddenly, the petitioners received a demand notice on 29 December, 2014 whereby the petitioners were asked to pay sum of Rs.51,50,601/-. The petitioners challenged the said demand and also challenged the basis of the proposed revision of annual valuation by the respondent authorities. In this background, the petitioners had filed an earlier writ petition being WP 319 of 2014 wherein an order was passed directing the respondent authorities to consider a representation to ascertain the outstanding taxes due and payable to the petitioners by the respondent authorities.

(d) Pursuant to the aforesaid order, the petitioners were given due notice of the hearing by the respondent no.3 and also were duly represented and heard. By the impugned order, the respondent no.3 rejected the contentions raised on behalf of the petitioners and directed them to make payments of the outstanding dues in respect of the flat.

3. Learned Advocate appearing on behalf of the petitioners has challenged the impugned order on the ground that the same had been passed in violation of the principles of natural justice and in contravention of law. He submitted that the impugned demand for the enhanced tax even for the period prior to January 2011 did not reflect the correct annual valuation of the flat. He further submitted that the surrender of the tenancy by IFB Industries had taken place as far back as in March 2002 and this fact was not taken note of by the respondent authorities in fixing the annual valuation of the flat. He further alleged that the revision made by the respondent authorities was in violation of principles of natural justice and discriminatory. He also submitted that there was no notice served on the petitioners for the assessment period from January 1996-97. He further submitted that the respondent authorities

ignored the assurance given by the respondent authorities whilst accepting payment under the Waiver Scheme as recorded in the no objection certificate. He also submitted that the respondent no.3 erred in placing no reliance on the no outstanding certificate dated 29 March, 2012 issued by the respondent authorities to the petitioners and the impugned order was passed mechanically without considering the relevant facts and circumstances of the case.

4. On behalf of the respondent authorities, it was urged that the annual valuation of the flat was fixed on 13 March, 2012 at Rs.3,51,000/- with effect from 1996-97 and at Rs.4,66,830/- with effect from February 2006-07. From the inspection book 4/96-97 it appears that the annual valuation of the flat had been fixed on the basis of rent paid by IFB and the annual valuation of the subsequent period (i.e. February 02/06-07). He also submitted that the petitioners did not apply for mutation in accordance with law prior to 10 February, 2015 and the premises in question stood recorded in the names of Bimala Agarwal and others as persons liable to pay taxes. He submitted that the respondent authorities had already processed the case of the petitioner pertaining to vacating the tenancy in terms of Circular no.18 of 1986-87 dated 7 October, 1986 and Circular no.64 of 2013-14 dated 5 October, 2013 and that the aspect of vacating of the tenancy was duly taken note of by the respondent Corporation after receipt of Form A-75 Form no.1 on 10 February, 2015 in accordance with law.

5. Accordingly, it was said that the revised assessments had been processed with effect from the following quarter of the date of the submission of A-75

Form-1. In respect of the Waiver Scheme 2012, he submitted that interest and penalty had been duly waived for the bills presented upto 31 March, 2011. He further submitted that for the subsequent period there was no question of waiver of interest and penalty since the demands raised were outside the scope of the Waiver Scheme of 2012. He further submitted that in respect of the annual valuation for the period 4/96-97 and 2/06-07, four separate hearing notices were served on the petitioners. In this background he submitted that there was no merit in the case of the petitioners and the petitioner should be directed to pay the outstanding dues.

6. I have heard the parties. I have also considered the pleadings filed on their behalf. At the outset, I find that the impugned order is a reasoned order which has been passed after giving a full and proper opportunity to the petitioners. The petitioners were duly represented at the hearing before the respondent no.3. They filed their Written Notes of Submissions and also made arguments which have been recorded and dealt with in the impugned order. The respondent no.3 has adverted to each one of the grievances raised by the petitioners and has given his reasons. The respondent no.3 has found that even though the tenant IFB vacated the flat in the year 2002, no contemporaneous intimation was ever given to the respondent authorities. It was only after the submission of such information on 10 February, 2015 by filing A-75 Form-1 could the respondent authorities possibly take note of the flat having been vacated. The respondent no.3 has also found that the records revealed that the annual valuation of the flat in question was fixed by the hearing officer on 13 March, 2012 after giving four separate opportunities of

hearing to the petitioners. The respondent no.3 had also taken note of Inspection Book 4/97 to conclude that the annual valuation of the flat had properly and lawfully been fixed on the basis of the rent being paid by the IFB. The respondent no.3 has also found that the owners of the flat had not applied for mutation in accordance with law and the premises stood recorded in the name of Bimala Agarwal and other as persons liable to pay the taxes. In respect of the Waiver Scheme 2012, the respondent authorities had given appropriate credit to the petitioners for the bills which had been presented prior to 31 March, 2011. In this background, the respondent no.3 had come to a conclusive finding that it was not possible to revise the assessment for the relevant period.

7. Following these facts, I am of the view that the impugned order contains adequate and proper reasons and no grounds have been made out warranting interference with the same. I also find that there has been no violation of the principles of natural justice in passing the impugned order. The petitioners were given an adequate opportunity and were duly represented by lawyers before the respondent no.3. I also find that there is no illegality or perversity in the impugned orders nor is there any contravention of law.

8. For the forgoing reasons, I find no reason whatsoever to interfere with the impugned order. WP 406 of 2015 is dismissed. However, there shall be no order as to costs.

9. It may be noted that by an order dated 4 March, 2020 I had directed the respondent authorities to give a fresh chart of the aggregate outstanding dues till date payable by the petitioners in respect of the flat. By the said order, I

had also directed the petitioners to inform this Court as to what amount they were ready and willing to pay in respect of the demand by the respondent authorities. Pursuant to that order, the respondent authorities had given a chart reflecting that an amount of Rs.1,15,62471/- was due and payable by the petitioners till date. Notwithstanding receipt of such chart, the petitioners did not suggest or even propose to make any payment in respect of the outstanding taxes and dues. It is true that the actions of the respondent authorities must be guided by the principles of fair play, justice, equity and reasonableness. However, fairness is not a one way street where the respondent authorities only have to show fairness and the petitioners can merrily choose not to make any payment towards outstanding taxes and pursue to litigate for years. For this reason also I am of the view that there is no equity in favour of the petitioners.

10. Accordingly, WPO 406 of 2015 stands dismissed.

11. A certified copy of this judgment, if applied for, be given to the parties upon compliance with all necessary formalities.

(Ravi Krishan Kapur, J.)